

STATE OF MICHIGAN

MIKE COX, ATTORNEY GENERAL

INSURANCE CODE: Corporate insurance agency's use of the
word "insurance" in company name

CORPORATIONS:

Section 213(1) of the Business Corporation Act, 1972 PA 284, MCL 450.1213(1), does not require a corporate insurance agency that includes the word "insurance" in its name to also include the word "agency," and a corporate agency is free to use the word "insurance" in its name so long as the name, taken as a whole, does not imply that the agency is an insurance or surety company.

Opinion No. 7242

February 10, 2010

Mr. Ken Ross
Commissioner
Office of Financial and Insurance Regulation
611 W. Ottawa Street, 3rd Floor
Lansing, MI 48933

You have asked whether the Business Corporation Act, 1972 PA 284, MCL 450.1101 *et seq.*, requires that a corporate insurance agency include the word "agency" in its name if the corporation's name includes the word "insurance."

Corporate insurance agencies generally market and sell the insurance products offered by insurance companies, but these corporations do not themselves write insurance or indemnify against risks. Because corporate insurance agencies are simply marketing and sales organizations, Michigan law has long prohibited these agencies from assuming names that might imply to consumers that they are actually the insurer issuing coverage.

For example, when it was enacted in 1931, section 6 of the former General Corporation Act, 1931 PA 327, MCL 450.6, as amended by 1961 PA 15, prohibited any corporation that was not an insurance company from using the word "insurance" in its corporate name, providing in pertinent part:

And provided further, That *no corporation formed or existing under or subject to the provisions of this act shall assume any name which implies that it is a banking corporation, an insurance or surety company or a trust company, and no such corporation shall use the words, "bank", "industrial bank", "deposit", "insurance", "surety", "security", "trust", "trust company", or "guaranty" or "building and loan" in its corporate name, or use any combination of letters or words along with other letters or words in its corporate name to indicate or convey the idea of a bank or banking or industrial banking activity or security:* And provided further, That any nonprofit corporation formed or existing under or subject to the provisions of this act as a bona fide insurance trade association shall be entitled to use the word insurance as a part of its corporate name: Provided, That such name clearly indicates that the nonprofit corporation is an insurance trade association and is not engaged in the insurance business. [Emphasis added.]

Shortly after its enactment, the Attorney General, in OAG, 1931-1932, p 601 (June 10, 1932), interpreted this section as prohibiting any corporation that was not an insurance company from using the word "insurance" in its name.

The request that triggered the issuance of that opinion asserted that the purpose underlying section 6 of the General Corporation Act was to prevent corporations other than insurance companies from assuming names that might deceive the public into believing they were insurance companies. The request further asserted that, in light of this purpose, a corporate insurance agency should be allowed to include the words "insurance agency" in its name because the word "insurance" when combined with the word "agency" would not imply that the corporation was an insurance company.

The opinion acknowledged that the combination of the words "insurance" and "agency" might be sufficient to prevent any confusion about the nature of an insurance agency's business. But the Attorney General rejected the suggestion that this made use of the word "insurance" allowable in light of the statute's clear prohibition. Instead, the opinion concluded that pursuant to the plain language of the General Corporation Act, corporations subject to that act were prohibited from using the word "insurance" in their names, even if "insurance" was combined with the word "agency." OAG, 1931-1932 at 603.

The General Corporation Act was repealed by the Business Corporation Act, which took effect on January 1, 1973. The new Business Corporation Act continued to set certain requirements for corporate names in Michigan. Specifically, section 212(1)(a) of the Act, MCL 450.1212(1)(a), prevents corporations from using misleading words in their names:

(1) The corporate name of a domestic or foreign corporation formed or existing under or subject to this act shall conform to all of the following:

(a) Shall not contain a word or phrase, or abbreviation or derivative of a word or phrase, which indicates or implies that the corporation is formed for a purpose other than 1 or more of the purposes permitted by its articles of incorporation.

Section 212 also states that a corporate name "[s]hall not contain a word or phrase, an abbreviation, or derivative of a word or phrase, the use of which is *prohibited or restricted* by any other statute of this state, unless in compliance with that restriction." MCL 450.1212(1)(c) (emphasis added).

One such prohibition or restriction on corporate names is in section 213(1) of the Business Corporation Act, MCL 450.1213(1). Section 213 prohibits a corporation that is not an

insurance company from assuming a name that implies it is an insurance company, but it does not include the absolute prohibition against the use of the word "insurance" that was contained in section 6 of the repealed General Corporation Act. Section 213(1) provides:

A corporation formed or existing under or subject to this act other than a bank holding company registered or to be registered as a bank holding company under the bank holding company act of 1956, chapter 240, 70 Stat. 133, shall not assume a name that implies that it is a banking corporation, an insurance or surety company, or a trust company, and the corporation shall not use the word "bank", "industrial bank", "deposit", "surety", "security", "trust", or "trust company" in its corporate name or use a combination of the letters or words with other letters or words in its corporate name to indicate or convey the idea of a bank or banking or industrial banking activity or security unless from the other words constituting the name it is clear that the business conducted does not include the business of banking. [Emphasis added.]¹

Unlike its predecessor – section 6 of the General Corporation Act – section 213(1) does not contain any prohibition on the use of the term "insurance," other than the general restriction that a corporation not use the term in a misleading manner.

After section 6 of the General Corporation Act was repealed and replaced by section 213 of the Business Corporation Act, the Attorney General was again asked whether a corporate insurance agency was precluded from using the word "insurance" in its corporate name. In OAG, 1979-1980, No 5756, p 922 (August 19, 1980), the Attorney General acknowledged the 1932 opinion, and its conclusion under the General Corporation Act then in effect that there was an absolute prohibition against using the word "insurance" in the name of a corporation that was not an insurance company, making no exception for its use in combination with the word "agency."

¹ A casual reading of section 213(1) or section 6, its predecessor under the General Corporation Act, might suggest that its prohibitions apply to all corporations, including insurance companies. This is not the case because section 213(1) applies only to corporations "formed or existing under or subject to" the Business Corporation Act, which "does not apply to insurance, surety, savings and loan associations, fraternal benefit societies, and banking corporations." MCL 450.1123(2). Those industries are all governed by specific statutory schemes, such as the Insurance Code, MCL 500.100 *et seq.*

The Attorney General then considered the new language of section 213(1) of the Business Corporation Act and its legislative history, and observed that the bill that became the Business Corporation Act initially proposed including the word "insurance" among those words that a corporation was absolutely prohibited from using. But after the bill was referred to committee, "insurance" was stricken from the list of prohibited words, and was not included among the words prohibited by section 213(1) when 1972 PA 284 was enacted. Consequently, the Attorney General opined that "1972 PA 284, § 213 . . . does not preclude the use of the word 'insurance' in the name of a corporate insurance agency, provided that the word 'insurance' is used in conjunction with the word 'agency' so as not to mislead the public or imply that the corporation is an insurance company." OAG No 5756 at 923 (emphasis added).

You advise that since the issuance of OAG No 5756, this section has been interpreted to require that the word "agency" be used in conjunction with the word "insurance" in a corporate insurance agency's name. You note that this interpretation has caused numerous problems in the intervening years and that insurance agency naming conventions have changed significantly in the thirty years since OAG No 5756 was issued. While the inclusion of "agency" in corporate insurance agency names was ubiquitous in 1980, corporate insurance agencies formed in other States today frequently omit the word "agency." Further, insurance agencies increasingly conduct business on a multistate or even multinational basis. Thus, many multistate or multinational insurance agencies based outside of Michigan that conduct business under previously assumed names that omit the word "agency" have been required to include the word "agency" in their Michigan licensed companies in order to do business here. You indicate that this process is expensive and, in some cases, a disincentive to doing business in this State.

Additionally, imposing the opinion's requirement has created problems for your office in complying with the federal Gramm-Leach-Bliley Act, 106 PL 102; 113 Stat 1338 (November 12, 1999), which calls for uniformity and reciprocity among the States in regulating the insurance industry.

In light of these circumstances, you ask whether the inclusion of the word "agency" when the term "insurance" is used in a corporate name is actually mandated by section 213(1).

When interpreting a statute, the primary goal is to determine the Legislature's intent, which is best determined by the statutory language itself. *In re Petition of Attorney General for Investigative Subpoenas*, 274 Mich App 696, 704; 736 NW2d 594 (2007). Additionally, nothing should be read into a statute that is not within the manifest intent of the Legislature, as gathered from the statute itself. *In re Marin*, 198 Mich App 560, 564; 499 NW2d 400 (1993). It is a fundamental principle of statutory construction that "a clear and unambiguous statute leaves no room for judicial construction or interpretation." *Massey v Mandell*, 462 Mich 375, 380; 614 NW2d 70 (2000), quoting *Coleman v Gurwin*, 443 Mich 59, 65; 503 NW2d 435 (1993). Instead, "when the Legislature has unambiguously conveyed its intent in a statute, the statute speaks for itself and there is no need for judicial construction; the proper role of a court is to apply the terms of the statute to the circumstances in a particular case." *Massey*, 462 Mich at 380.

Examining the plain language of section 213(1) reveals that the Legislature's intent was to prohibit a corporate insurance agency that is not an insurance company from assuming a name that "implies that it is . . . an insurance or surety company." But there is nothing in the

unambiguous language of section 213(1) that suggests a manifest intent on the part of the Legislature to mandate any particular word, or combination of words, be used in agency names.

This conclusion is reinforced by the history of the Business Corporation Act. The Business Corporation Act replaced the General Corporation Act, which had expressly prohibited the use of the word "insurance" in the name of any corporation but an insurance company. This prohibition was removed when the Business Corporation Act was enacted. If the Legislature had intended to place any specific limits on corporations' use of the word "insurance" beyond the broader, more general prohibition against corporations assuming names that imply that they are insurance companies, it could have done so. The Legislature did not do so, and reading such a requirement into the Business Corporation Act clearly violates well-established principles of statutory construction.

Similarly, continuing to include the words "bank," "industrial bank," "deposit," "surety," "security," "trust," and "trust company," in the list of words that may not be used by a corporation formed under the Business Corporation Act implies that the Legislature did not intend to exclude the use of other words, such as "insurance," which were not included in the list. This conclusion follows from another canon of statutory construction that the expression of one thing implies the exclusion of others not expressed – "*expressio unius est exclusio alterius*." *Miller v Allstate Ins Co*, 481 Mich 601, 611; 751 NW2d 463 (2008); *Sebewaing Industries Inc v Village of Sebewaing*, 337 Mich 530, 548; 60 NW2d 444 (1953); *Taylor v Michigan Public Utilities Comm*, 217 Mich 400, 402-403; 186 NW 485 (1922). Accordingly, a corporate

insurance agency may include the word "insurance" in its name as long as the name it assumes, taken as a whole, does not imply that the agency is an insurance or surety company.²

It is my opinion, therefore, that section 213(1) of the Business Corporation Act, 1972 PA 284, MCL 450.1213(1), does not require a corporate insurance agency that includes the word "insurance" in its name to also include the word "agency," and a corporate agency is free to use the word "insurance" in its name so long as the name, taken as a whole, does not imply that the agency is an insurance or surety company.

MIKE COX
Attorney General

² This opinion clarifies OAG, 1979-1980, No 5756, p 922 (August 19, 1980).